

MINUTES

BOARD OF ADJUSTMENT

TOWNSHIP OF BERKELEY HEIGHTS, NEW JERSEY

Regular Meeting

February 28, 2013

The Regular Meeting of the Board of Adjustment was called to order at 7:30 PM in the Public Meeting Room.

It was confirmed that the meeting was being held in conformance with all regulations of the SUNSHINE LAW and proper notice had been given to the Courier News; also, the Agenda had been posted in Town Hall, Board Office, and supplied to the Township Clerk at least forty-eight hours prior to the meeting. The Agenda items will not necessarily be heard in the order listed and the meeting will not continue significantly past 10:30 PM.

Roll Call:

Members present were Mr. Bussiculo, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Minkoff, Mr. Sullivan and Mr. Delia. Mr. Siburn and Mrs. Granholm were absent. Mr. Daniel Bernstein, Board Attorney, and Mr. Michael Mistretta, Board Planner, were also present.

Applications for Review:

App. #25-12: Bob & Cindy Cray, -- 50 Beech Avenue, Block 2301, Lot 10 (R-15 Zone)

Proposed one-story principal addition which results in Building Coverage and Total Lot Coverage limits being exceeded. (Building Coverage allowed: 15%; existing: 17.20%; proposed 19.23%. Total Lot Coverage allowed: 25%; existing: 27.34%; proposed: 34.0 %.) Pre-existing, nonconforming items are Lot Area, Lot Width, Principal Front-yard Setback, Side-yard Setback and Combined Side Yards.

Bob and Cindy Cray, previously sworn, stated there was some confusion about the size of their lot when they appeared before the Board last month. All the percentages have been recalculated and now there is only one item, that is, building coverage of 15.75% where 15% is allowed.

In response to questions from the Board, Mr. and Mrs. Cray stated that there is no shed on the property, they will have their architect contact the Township Engineer regarding drainage and no trees are being removed.

Open to Public

The hearing was opened to the public for questions or comments regarding the application. There were no members of the public who had questions or comments and the hearing was closed to the public.

A motion was made by Mr. Minkoff, seconded by Mr. Delia, to approve Application #25-12: Bob & Cindy Cray, -- 50 Beech Avenue, Block 2301, Lot 10 (R-15 Zone), subject to the standard conditions, including deck conditions, that shall be set forth in a Resolution of Memorialization to be adopted by the Board at a future meeting. The voice vote was unanimous with Mr. Bussiculo, Mr. Miller, Mr. Smith, Mr. Minkoff, Mr. Sullivan and Mr. Delia voting in favor. There were none opposed.

App. #1-13: Sharon & Wilhelm Fischer, 50 Twin Falls Road, Block 4502, Lot 28 (R-20 Zone)

Proposed principal addition does not conform to front-yard setback requirements (required: 50'; existing and proposed: 40.3'). The following are pre-existing, nonconforming conditions: front-yard setback (existing house), lot width, principal side-yard setback, accessory structure (a shed with additional "lean to" roofed area abutting the shed) that does not conform to side-yard setback requirements, and existing driveway less than the required 5' off the side property line.

Sharon and Wilhelm Fischer were sworn and stated that they are requesting a variance for an addition on the right side of their house. The front yard setback requirement is 50', the existing setback is 40.3' and with the addition it will continue to be 40.3'. They are also requesting a variance for the driveway that is less than 5' off the property line, which was an existing condition when they bought the property. There is an existing shed on the property that is 145 square feet.

Mr. and Mrs. Fischer presented Exhibit A-1 – set of photographs showing the property and the existing shed.

In response to questions regarding the shed, Mrs. Fischer stated that they store their yard furniture in the lean-to part of the shed. They might remove that part of the shed when they put on the addition and they would have no problem with a requirement that it be removed. The shed is set on blocks and is 9' from the

property line where 12' is required. They did not move it further from the property line in order to preserve two sycamore trees.

Discussion took place regarding the shed. The applicants agreed to remove the lean-to extension.

Open to Public

The hearing was opened to the public for questions or comments regarding the application. There were no members of the public who had questions or comments and the hearing was closed to the public.

A motion was made by Mr. Miller, seconded by Mr. Smith, to approve Application #1-13: Sharon & Wilhelm Fischer, 50 Twin Falls Road, Block 4502, Lot 28 (R-20 Zone), subject to the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board at a future meeting. The voice vote was unanimous with Mr. Bussicula, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Minkoff, Mr. Sullivan and Mr. Delia voting in favor. There were none opposed.

App. #2-13: Mario LoPresti, 120 Roland Road (Murray Hill), Block 4802, Lot 11 (R-20 Zone)

Proposed project to develop the backyard with an in-ground swimming pool, paver patios, pergola, playset area, outdoor kitchen and fireplace would result in "Other Coverage" exceeding the 10% allowed. The existing shed, which does not conform to location requirements, will be relocated to a conforming location. The existing driveway is less than the required 5' off the side property line.

Mario and Kristie LoPresti were sworn. Brian Stratton, architect, was also sworn, gave his educational background and experience and was accepted as an expert witness.

Mr. Bernstein noted that he spoke with the zoning officer and was advised that there are no dimensions between structures required in the zoning ordinance. He also said the outdoor fireplace did not violate the zoning ordinance. It is considered an accessory and the height is permitted. He also did not believe the shed on the side of the house would be a violation.

In response to questions from the Board, Mr. Stratton stated that he will be consulting on the project but there will be other contractors. They propose to locate the pool equipment behind the pool and it will be 8 1/2' off the property line.

Discussion took place regarding the location of the pool equipment and the consensus of the Board was in favor of locating it in the back behind the pool. Mr. Stratton said there will also be plantings for screening.

Mr. LoPresti presented Exhibit A-1 – photograph of the existing shed, and Exhibit A-2 – architect's rendering showing the location of the equipment pad.

Discussion took place and it was noted that the equipment pad has to be minimum of 8' off the back property line and no closer than 12' from the side yard. They will also have to comply with the conditions contained in the pool ordinance.

Open to Public

The hearing was opened to the public for questions or comments regarding the application. There were no members of the public who had questions or comments and the hearing was closed to the public.

A motion was made by Mr. Delia, seconded by Mr. Boyer, to approve Application #2-13: Mario LoPresti, 120 Roland Road (Murray Hill), Block 4802, Lot 11 (R-20 Zone), subject to conditions discussed with regard to setbacks, drainage plan, tree permit, pool ordinance, hours of operation and the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board at a future meeting. The voice vote was unanimous with Mr. Bussiculo, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Minkoff, Mr. Sullivan and Mr. Delia voting in favor. There were none opposed.

App. #26-12: Ilya Shlakman, 525 Springfield Avenue, Block 611, Lot 7 (HB-3 Zone)

The Board has determined that the gasoline service station is a valid prior nonconforming use and structure. The applicant is requesting permission to make certain improvements to the property which require variance relief. The applicant requests waiver of formal site plan application or alternatively waiver of certain site plan requirements. The applicant has submitted a two-page application and five plans.

Mark Williams, attorney for applicant, stated that on January 24th the applicant obtained a determination by the Board that the use as a gas station is a valid non-conforming use and at that time the Board requested information about the improvements intended to be made by the applicant. The applicant provided a plan to the Board Planner, Mr. Mistretta and met with him to review it. The plan

shows the location of the pumps, tanks, kiosk by the pumps and a canopy. The applicant proposes to change the Getty sign to Enrite with a sign that is similar in size but thinner and smaller.

Mr. Bernstein advised that he has spoken with Mr. Williams and Mr. Mistretta. Mr. Mistretta has some concerns about the kiosk and the canopy since they would constitute an expansion of a non-conforming use. Mr. Shlakman had testified that he wants to close on the property and in order to close he needs a resolution from the Board with regard to the pumps and tanks. They are also seeking approval of the proposed free standing sign and price sign. The other items can be deferred.

Mr. Mistretta advised that there is no issue with the pumps or tanks.

Mr. Shlakman testified as to the size of the proposed Enrite sign versus the size of the existing Getty sign. The existing sign is 60 square feet and the proposed is 55 square feet.

Exhibit A-1 - letter from Mr. Bocko regarding the variances needed for the proposed sign was presented.

Mr. Shlakman stated that two signs are needed for prices – cash and credit.

Mr. Shlakman presented Exhibits A-3 and A-4 examples of the free standing sign with colors red, green and black and the price sign that is black with green numbers. Those are Enrite trademark colors.

Discussion took place regarding the proposed colors and the colors that have generally been approved for the downtown area.

Discussion took place regarding the proposed canopy. It was noted that no signage would be permitted on the canopy.

Mr. Williams noted that the applicant agrees that there would be no signage on the canopy and that the canopy will be the subject of a future application.

Discussion took place regarding the hours of operation. Mr. Shlakman proposed 6 a.m. to 12 a.m. John Amadeo, property owner, who was previously sworn, stated that he believes the hours of the previous station were 6:00 a.m. to 10:00 or 11:00 p.m. August Santore, previously sworn, stated that his recollection is 6:00 a.m. to 9:00 p.m.

The consensus of the Board was in favor of permitting the hours of operation to be 6:00 a.m. to 10:00 p.m., Monday thru Sunday for pumping of gas, 8:00 a.m. to 6:00 p.m. for repairs, Monday thru Saturday with no repairs on Sunday. It was further noted that there would be no limo parking or auto rental allowed.

Discussion took place regarding the lighting at the station. Mr. Williams stated that the applicant does not want any new lights; just what is there now. Mr. Mistretta stated that he has no problem with the pre-existing lights. Mr. Mistretta was given authority to review the proposed lights.

Mr. Shlakman stated that he plans to remove the blacktop and put in concrete and new curbing. They will also power wash the building, paint it, put up a new fence and fix or replace the roof.

Mr. Bernstein noted that the pavers, curbing and fence should be shown on the revised plan and be subject to Mr. Mistretta's approval.

Discussion took place regarding the Township's downtown standards. Mr. Mistretta cautioned the applicant to review the downtown standards and noted that an expansion of a pre-existing building causes the downtown standards to kick in. He read the section of the ordinance that provides that "no non-conforming building or structure may be enlarged, expanded, increased in intensity or altered unless it complies with downtown standards". He noted that the installation of pumps and tanks, signage as previously existed, paving of the lot do not trigger the downtown standards. It was further noted that a kiosk would trigger the downtown standards.

The applicant agreed that all lighted signs and lights will be turned off when the station is closed.

Mr. Williams advised that his client will meet with Mr. Mistretta to review the plans that will be submitted to the County.

Open to Public

The hearing was opened to the public for questions or comments regarding the application. There were no members of the public who had questions or comments and the hearing was closed to the public.

A motion was made by Mr. Smith, seconded by Mr. Minkoff, to approve Application #26-12: Ilya Shlakman, 525 Springfield Avenue, Block 611, Lot 7 (HB-3 Zone) with regard to improvements including tanks, pumps, free standing

sign, lighting to be reviewed by Mr. Mistretta, hours of operation, power washing, curbing, and fencing, subject to conditions discussed and the standard conditions that shall be set forth in a Resolution of Memorialization to be adopted by the Board at a future meeting. The voice vote was unanimous with Mr. Bussiculo, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Minkoff, Mr. Sullivan and Mr. Delia voting in favor. There were none opposed.

The application will remain open for a period of one year so that the applicant can proceed with a further application with regard to a canopy or other improvements.

Adoption of Resolution:

Resolution authorizing Daniel Bernstein to defend Board in action brought by Stop & Shop.

A motion was made by Mr. Miller, seconded by Mr. Delia, to adopt the above Resolution. The voice vote was unanimous with Mr. Bussiculo, Mr. Miller, Mr. Boyer, Mr. Smith, Mr. Minkoff, Mr. Sullivan and Mr. Delia voting in favor.

Adoption of Resolution:

App. #26-12: Ilya Shlakman, 525 Springfield Avenue, Block 611, Lot 7 (HB-3 Zone)

Approving a certificate pursuant to N.J.S.A. 40:55D-68 certifying that the gas station and the structures are a prior nonconforming use and structures.

A motion was made by Mr. Delia, seconded by Mr. Smith, to adopt the above Resolution. The voice vote was unanimous with Mr. Bussiculo, Mr. Miller, Mr. Smith, Mr. Minkoff, Mr. Sullivan and Mr. Delia voting in favor.

Adoption of Minutes:

February 14, 2013

The approval of the minutes was carried to the next meeting of the Board.

Adjournment:

A motion was made by Mr. Miller, seconded by Mr. Delia, to adjourn the meeting. The voice vote was unanimous and the meeting was adjourned at 9:32 PM.

Regina Giardina, Secretary Pro Tem